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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,113	08/06/2001	Shane D. Wolf	01.39US-AVEDA	9546

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EXAMINER
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MANAHAN, TODD E

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	Application No. <b>09/923,113</b>	Applicant(s) <b>Wolf</b>	
	Examiner <b>Todd E. Manahan</b>	Art Unit <b>3732</b>	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>3 Dec 2002</u>			
2a) <input checked="" type="checkbox"/> This action is <b>FINAL</b> .      2b) <input type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input checked="" type="checkbox"/> Claim(s) <u>14 and 17-24</u> is/are pending in the application.			
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>14 and 17-24</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.			
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.			
<b>Priority under 35 U.S.C. §§ 119 and 120</b>			
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
*See the attached detailed Office action for a list of the certified copies not received.			
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.			
15) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.			
<b>Attachment(s)</b>			
1) <input type="checkbox"/> Notice of References Cited (PTO-892)		4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____	
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____		6) <input type="checkbox"/> Other: _____	

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tindall (U.S. Patent No. 970,406) in view of McCall et al. (U.S. Patent No. 5,000,599 cited by applicant).

Tindall discloses a pair of scissors comprising a head region, a handle region comprising finger loops 6,7 and deformable grips 12 located within each loop. Each grip includes a deformable outer surface 13 an inner surface and a chamber therebetween. Each grip further may include a groove 14 that receives a portion of the inner diameter of each loop. Tindall discloses the invention essentially as claimed except for the viscous material. McCall discloses a similar deformable grip having a deformable outer surface 28 that surrounds an inner layer of viscous medium 30 (figure 3) or alternatively an outer layer 34, and inner layer 38 connected by radially oriented webs 36 defining chambers having viscous medium therein and having vents 42 to permit passage of viscous medium between the chambers (figure 7). The viscous medium may be a putty such as vinyl elastomer or silicone-based putty (col. 4, lines 35-37) or a room temperature curable

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substance (col. 4, lines 52-62) . As such, the grip will deform to the anatomical contours of the individual user in a custom fit manner and retain the deformation for a substantial period of time, for example at least five seconds. It would have been obvious to one skilled in the art to fill the chambers of the grips of Tindall with a viscous medium as taught by McCall et al in order that the grip will deform to the anatomical contours of the individual user in a custom fit manner and retain the deformation for a substantial period of time, for example at least five seconds.

***Response to Arguments***

Applicant's arguments filed 03 December 2002 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, McCall et al clearly teaches the desirability of using a viscous medium in the chamber having vents between the chamber. In col. 1, lines 52-65, McCall et al set forth some of the problems with such air filled grips, namely grip's tendency to spring back immediately to its undeformed state. By filling the chambers with a viscous medium, McCall et al create a grip that "assumes a custom fit configuration when gripped for enhanced user comfort and

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reduced fatigue" and "retains the custom fit configuration for a substantial period of time" (col. 2, lines 9-13). By retaining such configuration, "the grip can be released and regripped by the same user without undergoing significant shape change" (col. 2, lines 34-38). Thus, McCall et al clearly provide motivation to one skilled in the art to replace the air chambers of Tindall with chambers filled with a viscous medium.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is (703) 308-2695.

T. E. Manahan  
February 7, 2003

Todd E. Manahan  
Primary Examiner

